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SUPREME COURT OF THE UNITED STATES

October Term 1966

No. 588

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - Petitioners,

versus

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - - - - - Respondents.

PETITION FOR WRIT OF CERTIORARI.

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SUPREME COURT OF THE UNITED STATES

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No. _____

THE FIRST HARDIN NATIONAL BANK and THE FARMERS BANK OF VINE GROVE, KENTUCKY, - - - - - - - - *Petitioners,*

v.

FORT KNOX NATIONAL BANK and JAMES J. SAXON, Comptroller of the Currency of the United States, - *Respondents.*

PETITION FOR WRIT OF CERTIORARI.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on May 26, 1966.

CITATIONS TO OPINIONS BELOW.

The opinion of Henry L. Brooks, United States District Judge for the Western District of Kentucky, in the case of The First Hardin National Bank, *et al.* v. Fort Knox National Bank, Civil Action #5046, has not been officially reported. A true copy of this opinion is appended hereto as Appendix A to this petition. The Opinion of the Sixth Circuit Court of Appeals has been officially reported at 361 F. 2d 276 (6th Cir., 1966), and a true copy thereof is appended hereto as Appendix B to this petition.

JURISDICTION.

(1) The judgment of the Court of Appeals for the Sixth Circuit is dated May 26, 1966, and was entered on May 26, 1966.

(2) There has been no rehearing. By Order of Mr. Justice Brennan dated August 5, 1966, the time within which to petition for certiorari was extended to and including September 23, 1966.

(3) Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED.

(1) May the Comptroller of the Currency interpret Kentucky Revised Statute 287.180(2) contrary to the Kentucky courts so as to permit under 12 U.S.C. §36(c) a national bank situated on the Fort Knox Military Reservation to establish a branch off the reservation in Hardin County, Kentucky?

(2) Have petitioners had their day in court when the District Court and the Court of Appeals refused to review the Comptroller of the Currency's finding of law that the establishment of a branch bank in Hardin County by the Fort Knox National Bank is authorized by Kentucky and Federal statutes?

(3) Is the determination of the Comptroller of the Currency and the courts below in conflict with the purposes and intent of the National Bank Act as found in 12 U.S.C. *et seq.*, as interpreted by the courts?

STATUTES PRESENTED.

(1) 12 U.S.C. 36; text is appended hereto as Appendix C.

(2) Kentucky Revised Statute 287.180; text is appended hereto as Appendix D.

STATEMENT OF THE CASE.

The First Hardin National Bank is a national banking corporation, with its principal office at Elizabethtown, Hardin County, Kentucky, and with a branch office at Radcliff, Hardin County, Kentucky. The Farmers Bank of Vine Grove is a state banking institution with one office located at Vine Grove, in Hardin County, Kentucky, very close to Radcliff. The defendant, Fort Knox National Bank, is a national banking corporation, with its principal office upon the Fort Knox Military Reservation on land, which before the reservation was created, was a part of Hardin County, Kentucky, and with a branch upon the Fort Knox Military Reservation upon a part thereof which before the reservation was created, was a part of Meade County, Kentucky.

The Fort Knox National Bank announced it proposed to establish a branch in Radcliff, Hardin County, Kentucky, upon land which was not a part of the Fort Knox Reservation.

The right of a national bank to establish a branch bank is controlled by 12 U. S. Code, Section 36(c). It reads in part:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks."

This Section incorporates by reference Kentucky Revised Statutes 287.180, which provides, in pertinent part, that a bank cannot establish a branch outside of the County in which its main office is located. It reads in part:

"(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located and, subject to the limitation hereinafter imposed, within the county in which its principal office is located or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised."

Fort Knox was established and is now operated and controlled by the United States, pursuant to the authority granted to the Congress of the United States by Article I, paragraph 8 of the Constitution of the United States. The Section provides in substance that the Congress shall exercise exclusive "legislation" in all cases whatsoever, over such district if the district is purchased with the consent of the legislature of the state. Kentucky consented to the acquisition by the United States of the Fort Knox Military Reservation. Kentucky did not retain any right of any kind in or upon the land acquired by the United States.

At all times after the acquisition, the United States has exercised exclusive legislation, jurisdiction or sovereignty over the land so acquired, and the State has not claimed or exercised any legislation, jurisdiction or authority thereon, except certain limited rights receded to it by the act of Congress, commonly referred to as the "Buck Act," 4 U.S.C.A., paragraph 105, *et seq.* This Act only authorizes the collection by states of certain taxes upon military reservations and does not affect this action in any way.

These facts are not in dispute among the parties. The dispute deals with the legal conclusions flowing from the facts.

The plaintiffs-petitioners instituted this action in the United States District Court for the Western District of Kentucky to enjoin the defendant-respondent, Fort Knox National Bank, from opening a branch at Radcliff, Hardin County, Kentucky. Jurisdiction was invoked under 28 U.S.C. §1331 as calling into ques-

tion the rights of the defendant, Fort Knox National Bank under 12 U.S.C. §36(c). Plaintiffs-petitioners contended that since the main office of the Fort Knox National Bank is located on the Fort Knox Military Reservation, the Comptroller of the Currency under 12 U.S.C. §36(c) and KRS 287.180(2) may not permit a branch bank to be located off the Reservation in Hardin County, Kentucky (Complaint, Appendix E).

An answer (Appendix F) was filed by the Fort Knox National Bank and the Comptroller of the Currency intervened (Appendix G) in the action. Both contended that that portion of the Fort Knox Military Reservation on which the principal office of the Fort Knox National Bank was located was within the geographical boundaries of Hardin County, and, therefore, the requirements of KRS 287.180 had been met.

At a pretrial conference the District Court made "Findings of Fact," including the finding that the part of the Reservation upon which the main office of the Fort Knox National Bank was located was a part of Hardin County and, as a result, dismissed the Complaint for failure to state a cause of action. This action was appealed to the Sixth Circuit Court of Appeals which affirmed.

REASONS FOR GRANTING THE WRIT.

Preliminary Statement.

(1) The Comptroller of the Currency, the District Court and the Circuit Court of Appeals have completely misinterpreted the meaning and thrust of this Court's opinion in the case of the *Commissioners of the Sinking Fund of the City of Louisville* v. *Howard,* 344 U. S. 624 (1953), and, as a result, have misconstrued the law of Kentucky as to the establishment of branch banks.

(2) This case involves the scope of judicial review and the nature and function of an administrative body. Petitioners contend that the finding of the Comptroller of the Currency as to state law is a finding of law, not one of fact, and subject to complete judicial review. On this point there appears to be a conflict between the Sixth Circuit Court of Appeals' decision in this case and the Court of Appeals for the District of Columbia. *Commercial State Bank* v. *Gidney,* 174 F. Supp. 770 (D.C. D.C., 1959), *aff'd. per curiam,* 278 F. 2d 871 (D.C. Cir., 1960).

(3) No matter what the finding of the law of the particular state is labeled (either a finding of fact or of law), the particular finding in this case of Kentucky law is clearly erroneous and contrary to law.

(4) The interpretation given to the National Banking Act by the Comptroller of the Currency, the District Court and the Circuit Court of Appeals below is

violative of the intent of the National Banking Act, 12 U.S.C. §21, *et seq.*, in that in this case the basic equality between the state and national banking systems is destroyed.

Argument.

FORT KNOX IS NOT WITHIN HARDIN COUNTY WITHIN THE MEANING OF KENTUCKY REVISED STATUTE 287.180(2) AND COMPTROLLER OF THE CURRENCY HAS NO AUTHORITY UNDER 12 U.S.C. 36(c) TO PERMIT A NATIONAL BANK LOCATED ON FORT KNOX TO ESTABLISH A BRANCH IN HARDIN COUNTY.

The authority of the Conptroller of the Currency in issue here is found n 12 U.S.C., Section 36(c):

> "A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) *at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. . . .*" (Emphasis added.)

The Comptroller, thus, is bound by State law in his determination of whether or not a national bank

may establish a branch. This statutory restriction on the Comptroller's authority reflects the intent of the National Banking Act which is to maintain a balance between the dual banking systems. *State of South Dakota* v. *National Bank of South Dakota,* 219 F. Supp. 842 (D.C. S.D., 1963), *aff'd,* 335 F. 2d 444 (Cir. 8, 1964), *cert. denied,* 379 U. S. 970 (1964). It also reflects the intent of Congress that doubts concerning State law authorization of branches be resolved against permitting the branch. The statute specifically requires an affirmative authorization in the applicable state statute.

The state statute on branch banks in Kentucky is KRS 287.180 which reads in part:

> "(2) Any corporation presently or hereafter engaged in the business of banking, and meeting the requirements of this subsection, may apply to the Commissioner of Banking for permission to establish, within the city in which its principal office is located, *within the county in which its principal office is located* or in an adjacent county, in which there is no existing bank a branch at which all of the powers conferred in subsection (1) of this section may be exercised. Before the Commissioner of Banking shall approve or disapprove any application made under this subsection he shall ascertain and determine that the public convenience and advantage will be served and prompted thereby and that there is reasonable probability of the successful operation of such branch." (Emphasis added.)

The issue clearly is then whether or not Fort Knox is within Hardin County within the meaning of KRS 287.180.

Petitioners admit that, geographically speaking, Fort Knox (or that portion of it pertaining to this case) is within the geographic boundaries of Hardin County. This point was settled by the case of *Commissioners of the Sinking Fund of the City of Louisville* v. *Howard*, 344 U. S. 624 (1953). The Sixth Circuit (and presumably the Comptroller) treated this geographical finding as determinative of the issue. Petitioners disagree. Kentucky law is controlling here and for the purpose of some Kentucky statutes Fort Knox is within Hardin County and for others it is not. For example, Fort Knox is not within Hardin County for ad valorem taxation purposes. (See *Hardin County Board of Supervisors* v. *Kentucky Limousines*, Ky., 293 S. W. 2d 239 (1956).) It is not within Hardin County for purposes of criminal trial venue and jurisdiction (see *Commonwealth* v. *King*, 252 Ky. 699, 68 S. W. 2d 45 (1934)). Therefore, it is necessary to proceed to an independent construction of the word "county" as used in KRS 287.180. The *Howard* case is not determinative of this issue; it held that the federal property was within the City of Louisville geographically speaking but that the City had jurisdiction to apply its taxing ordinance only by virtue of a Congressional authorization:

> "Two questions are presented by this appeal: (1) The validity of the annexation by the City of Louisville, Kentucky, or certain federally owned

land on which a *Naval Ordnance Plant is located; and (2) *The validity of the Louisville occupational tax or license fee ordinance as applied to employees of this Ordnance Plant"* (344 U. S. 624, at 624, 625). (Emphasis supplied.)

Justice Minton went on after deciding that the Naval Ordnance plant was within Louisville, geographically speaking, to say:

> "Even though the Ordnance Plant is within the boundaries of the City of Louisville pursuant to the annexation, *exclusive jurisdiction over the area still remains with the United States, except as modified by statute.* U. S. Const., Art. I, § 8, cl. 17; Surplus Trading Co. v. Cook, 281 U. S. 647, 652, 74 L. Ed. 1091, 1095, 50 S. Ct. 445. Within this jurisdiction, the right to tax income paid to employees of the Government who worked at the Ordnance Plant was granted by 4 USC §§ 105-110, known as the Buck Act" (344 U. S. 624, at 627). (Emphasis supplied.)

Thus, once it is determined that Fort Knox is within Hardin County geographically it is still necessary to examine into jurisdiction. What saved the City of Louisville ordinance in *Howard* was the "Buck" Act, but there is no such saving grace here. Lacking that permission, the Kentucky Court of Appeals has consistently refused to include federal property within the word "county" in various Kentucky statutes.

A case directly on point is *Commonwealth* v. *King, supra.* In this case King was indicted for making

false entries on the books of a bank located on Fort Knox. The indictment read that the offense was committed in Hardin County "within Fort Knox, the United States Government reservation." The defendant contested the jurisdiction of the Hardin Circuit Court and the Court of Appeals upheld this contention. For purposes of this Kentucky Statute Fort Knox was not within Hardin County so as to give the Court jurisdiction. In *Hardin County Board of Supervisors* v. *Kentucky Limousines, supra,* the Court of Appeals recognized that geographically speaking Fort Knox was within Hardin County, but, after an extensive review of the cases, held Fort Knox was not within the taxing jurisdiction of the County. In the latest Kentucky case, *Kingwood Oil Company* v. *Henderson County Board of Supervisors,* Ky., 367 S. W. 2d 129 (1963), the Court of Appeals held that Henderson County could not levy an ad valorem tax on certain oil and gas leases located within Camp Breckinridge. They said:

> "It must be remembered that the jurisdiction of the federal government over ceded land is *territorial* jurisdiction and embraces all activities, rights and transactions within the external boundaries of the land" (356 S. W. 2d 129, at 132).

KRS 287.180(2), *supra,* is the controlling statute here.

There are no Kentucky decisions construing the word "county" as used in this statute. There is no doubt that under the *Howard* case Fort Knox is geo-

graphically within Hardin County. The question is, however, does the word "county" as used in KRS 287.180(2) include Fork Knox. As shown by previously noted Kentucky cases the Kentucky Court of Appeals consistently has held that unless an exemption is granted by the Congress, Fort Knox, or any other government reservation property, is not subject to exercise of jurisdiction by a political subdivision of the State.

It has been argued below by respondent that these cases are not pertinent because they deal with jurisdiction. With this we cannot agree. The Kentucky Banking Statutes as found in Chapter 287 of the Kentucky Revised Statutes are regulatory statutes. They set up the Department of Banking (287.011), give authority to a Banking Commissioner (287.012), set up the procedure for organizing a bank (287.050), give the qualifications for directors of banks (287.065), give the amount of capital (287.065), etc. and what powers banks shall have (287.180). Since the Kentucky Banking Statute is regulatory in nature, and thus involves jurisdiction, the word "county" in the statute must be interpreted consistent with prior treatment by the Kentucky Court of Appeals. The Court of Appeals of Kentucky has uniformly held that Fort Knox and other federal territory is not within the regulatory or taxing jurisdiction of Kentucky counties. Thus, in this case the Fort Knox National Bank is not within Hardin County for purposes of KRS 287.180 and, therefore, may not, under KRS 287.180 and 12 U.S.C., Section 36(c), establish a branch in Hardin County.

PETITIONERS HAVE NOT HAD THEIR DAY IN COURT WHEN THE DISTRICT COURT AND COURT OF APPEALS HAVE REFUSED TO FULLY REVIEW THE COMPTROLLER OF THE CURRENCY'S FINDING OF LAW THAT THE ESTABLISHMENT OF A BANK IN HARDIN COUNTY BY THE FORT KNOX NATIONAL BANK IS AUTHORIZED BY LAW.

The Comptroller in the instant case held that the establishment of a branch by the Fort Knox National Bank in Hardin County proper was not in violation of Kentucky law. The Sixth Circuit Court of Appeals in commenting on that determination in this case said:

> "This Court held in *Community National Bank of Pontiac* v. *Saxon,* 310 F. 2d 224 (C. A. 6, 1962), that the Comptroller has 'the initial responsibility of determining whether the several conditions under which a National banking association may establish a branch are met.' The scope of judicial review is limited, and the *factual findings* of the Comptroller will not be overturned unless they are arbitrary, capricious, or otherwise not in accordance with law. In that case the Court held that the finding of the Comptroller that the area in which the defendant bank sought to establish a branch was a village as required by the Michigan statute was essentially a *finding of fact* and his decision was conclusive since it was reasonably supported by substantial evidence.
>
> * * * * * * *
>
> "Therefore, for the purposes of the Banking Act it became a question of fact for the Comptroller to determine, and the finding of the Comptroller that the part of Fort Knox upon which Appellee is located is part of Hardin County

as required by Kentucky statute, is a factual finding reasonably supported by substantial evidence" (361 F. 2d 276, at 278, 279). (Emphasis supplied.)

It is the position of petitioners that (a) the finding as to Kentucky law is not a finding of fact but one of law and subject to complete judicial review, and (b) that even if it is a finding of fact it is contrary to Kentucky Law and reviewable as is any extra-legal act of a federal or state official.

In *Commercial State Bank* v. *Gidney,* 174 F. Supp. 770, (D.C. D.C., 1959), *aff'd per curiam,* 278 F. 2d 871 (D.C. Cir., 1960), District Judge Youngdahl wrote:

> "Defendant argues that the approval or disapproval of branches of national banks is a matter clearly committed to the discretion of the Comptroller. But there is no discretion in the Comptroller to approve the establishment of a branch office at a location prohibited by law. Defendants cite Apfel v. Mellon, 1929, 59 App. D. C. 94, 33 F. 2d 805, and First National Bank of McKeesport v. Home Loan Bank Board, 1955, 96 U. S. App. D. C. 194, 225 F. 2d 33. Apfel was a suit to compel the Federal Reserve Board to approve the articles of incorporation of the appellants so that they might engage in international or foreign banking. The Court held that mandamus would not lie to control the exercise of the Board's discretion. *In the instant case, there is no desire to control the defendant's discretion; whether a particular area is in need of a bank, whether the local conditions warrant one, etc. (see supra, note 13) is clearly within the Comptroller's*

discretion. But, as mentioned above, there is no discretion to unlawfully issue a certificate" (174 F. Supp. 770). (Emphasis added.)

To allow the Sixth Circuit Court of Appeals' opinion to stand in this case is to grant to the Comptroller powers far beyond what was conceived by Congress. It makes his finding of law almost binding on review. It is the very essence of the appellate structure of our federal judiciary that findings of law, wherever originated from, are subject to review almost "de novo." In *Patton* v. *Railroad Retirement Board,* 313 F. 2d 434 (5th Cir., 1963), the Court said that "Although we are bound to the facts as found by the Board 'if supported by evidence,' we are in no manner bound in ascertaining the correctness of the Board's legal conclusions." The Third Circuit Court of Appeals said in *Boyd* v. *Folsom,* 257 F. 2d 778 (3d Cir., 1958):

> "It must immediately be noted that this finding by the Referee was in the nature of an ultimate finding of fact, and is nothing more than a legal inference from other facts. In re Pioch, 3 Cir., 1956, 235 F. 2d 903. While it is true, as the Secretary argues, that the reviewing authority of the District Court is limited in that it may not substitute its own factual findings for those of the Referee, Section 205(g), Social Security Act; Ferenz v. Folsom, 3 Cir., 1956, 237 F. 2d 46, since *ultimate facts* must be reached by a *process of legal reasoning* based upon the legal significance to be afforded primary evidentiary facts this aspect of administrative fact finding has its law-making aspect, and is therefore reviewable" (257 F. 2d 778 at 781). (Emphasis supplied.)

In *Whitney National Bank* v. *Bank of New Orleans & Trust Co.*, 323 F. 2d 290 (D.C. Cir., 1963), *reversed on other grounds*, 379 U. S. 411 (1965), the Circuit Court of Appeals commented on the Comptroller's discretion as follows:

> "The Comptroller asserts he has discretion as to whether to issue a Certificate of Authority to a new national bank which cannot be judicially controlled. The same contention was made in Commercial State Bank of Roseville v. Gidney, 174 F. Supp. 770 (D.C. D.C., 1959), where two state banks within one and one-half miles of a proposed national bank branch sought to enjoin the then Comptroller from authorizing the unlawful competition which threatened them with immediate and irreparable injury. Uncontroverted affidavits showed that the town of Clinton, site of the proposed branch, could not itself support the new facility, which would therefore necessarily draw its business from the surrounding communities already served by the complaining state banks. District Judge Youngdahl brushed aside the Comptroller's discretion argument by saying, at page 778:
>
> " 'Defendant argues that the approval or disapproval of branches of national banks is a matter clearly committed to the *discretion* of the Comptroller. But there is *no discretion* in the Comptroller to approve the establishment of a branch office at a location prohibited by law. * * * In the instant case, there is no desire to control the defendant's discretion * * *. But, as mentioned above, there is *no discretion* to unlawfully issue a certificate. * * *' " (323 F. 2d 290, at 300).

In commenting on the same point, Judge Walsh noted in *Commercial Security Bank* v. *Saxon,* 236 F. Supp. 457 (D.C. D.C., 1964), that the Circuit Court of Appeals for the District of Columbia clearly has held (as noted above) that the determination of state law by the Comptroller was not binding. He said:

> "The Comptroller further contends that his determination, based upon his statutory interpretation of 12 U.S.C. § 36(c), should be upheld by this court unless it is clearly unreasonable. Whatever be the merits of this contention, it is clearly not the law in this Circuit" (236 F. Supp. 457, at 458, 459).

In direct conflict with the above cited cases is the case relied upon by the Sixth Circuit in the instant case. In *Community National Bank of Pontiac* v. *Saxon,* 310 F. 2d 224 (6th Cir., 1962). The Sixth Circuit Court of Appeals said:

> "It is well settled that the decisions of executive officers on questions of fact are conclusive if reasonably supported by substantial evidence" (310 F. 2d 224, at 226).

In the opinion of the Sixth Circuit below the Court commented on the *Pontiac* case saying:

> "In that case the Court held that the finding of the Comptroller that the area in which the defendant bank sought to establish a branch was a village as required by the Michigan statute was essentially a finding of fact and his decision

> was conclusive since it was reasonably supported by substantial evidence" (361 F. 2d 276, at 278, 279).

They then went on to apply this rule to this case saying:

> "Therefore, for the purposes of the Banking Act it became a question of fact for the Comptroller to determine, and the finding of the Comptroller that the part of Fort Knox upon which Appellee is located is part of Hardin County as required by Kentucky statute, is a factual finding reasonably supported by substantial evidence" (361 F. 2d 276, at 279).

The determination by the Comptroller of the Currency that the branch was authorized under Kentucky law is a finding of law, not of fact, and subject to complete judicial review. *Boyd* v. *Folsom, supra.* This would appear to be the view of the Court of Appeals for the District of Columbia. *Whitney National Bank* v. *Bank of New Orleans & Trust Co., supra; Commercial Security Bank* v. *Saxon, supra.* Quite clearly then the Sixth Circuit Court of Appeals is in disagreement with the law of the Circuit Court of Appeals for the District of Columbia.

At this point it is appropriate to note that no matter what the rule may be as to scope of Judicial review of administrative determination, determinations contrary to law are reviewable. *Commercial State Bank of Roseville* v. *Gidney, supra; Community National Bank of Pontiac* v. *Saxon, supra.* Here, the law of Kentucky is quite clearly contrary to the deter-

mination of the Comptroller of the Currency. Failure to review the finding of the Comptroller of the Currency when clearly "contrary to law" deprives the petitioners of due process of law for it allows the petitioner no review of an administrative determination adverse to its interests at which it had no voice or hearing. It allows an illegal act to stand because the Comptroller has decided the point. As Mr. Justice Frankfurter wrote in the case of *Inland Waterways Corporation* v. *Young,* 309 U. S. 517 (1940):

> "The Comptroller of the Currency, to be sure, must himself move within the orbit of the National Banking Act. Illegality cannot attain legitimacy through practice" (309 U. S. 517, at 524).

The determination of the Comptroller of the Currency as to Kentucky law is clearly wrong, and as such, is clearly "contrary to law" and should be overturned. At the very least, petitioners should have their day in court by directing the Courts below to examine the Comptroller's action in the light of applicable Kentucky law and decisions.

THE DETERMINATION OF THE COMPTROLLER OF THE CURRENCY AND THE COURTS BELOW IS IN CONFLICT WITH THE PURPOSES AND INTENT OF THE NATIONAL BANK ACT AS FOUND IN 12 U.S.C., *ET SEQ.*, AS INTERPRETED BY THE COURTS.

It has been repeatedly held that the purpose of 12 U.S.C., Section 36(c), is to promote equality between the State and National banking system by limiting National bank branches to those areas where state

banks may have branches. In *National Bank of Detroit* v. *Wayne Oakland Bank*, 252 F. 2d 537 (6th Cir., 1958), the Court said:

> "(3) The history of federal legislation regarding branch banking and the statutes applying thereto leave a clear and definite impression that Congress intended, with respect to the location of branches, that a national bank should have no greater rights than it would if it were a state bank, and that a national bank was to be permitted to establish and operate a branch in a state only at such a point as it could, by express provisions of a state statute, establish and operate a branch if it were then a state bank" (252 F. 2d 537, at 540).

The result of the decision below is to allow the Fort Knox National Bank to do that which no state bank could do; that is have a branch in a county other than the county in which it is located. If the Fort Knox National Bank is within Hardin County, then its existing branch now located on the post is within Meade County. The District Court ruled this fact irrelevant and refused to consider it. It is very relevant when one considers the intent of 12 U.S.C., Section 36(c). The Fort Knox National Bank has branches in two counties, something expressly forbidden by KRS 287.180 to state banks except under circumstances not pertinent to the issue herein. This result clearly violates the spirit of the Act. Petitioners' position on the other hand is in complete harmony with the Act. If Fort Knox is not within Hardin County for pur-

poses of KRS 287.180, then it can have branches on federal property no matter what county or state it was geographically located in because the limitations of the Kentucky statute would be inapplicable.

There is another reason that Sixth Circuit Court of Appeals Opinion in this case violates the purposes and spirit of the National Banking Act. 12 U.S.C., Section 36(c) was designed to promote equality between the state and National banking systems in the competitive area. *Herbert J. Rushton, Attorney General Ex. Rel. Commissioner of Banking* v. *Michigan National Bank,* 298 Mich. 417, 299 N. W. 129 (1941). *Commercial Security Bank* v. *Saxon, supra.* The Fort Knox National Bank will have far greater economic power and resources if on one hand it may establish branches on federal territory regardless of geographic location and in Hardin County as will. It will have access to far more people, more depositers and deposits, and exert as a result far greater economic power.

CONCLUSION.

The Comptroller of the Currency's determination of Kentucky law as to the location of branch bank is clearly erroneous. This finding of law by the Comptroller of the Currency is fully reviewable by the courts and the refusal to do so by the Court below has deprived petitioners of their rights to review. The Sixth Circuit opinion in the instant case is also in conflict with opinions of the Circuit Court of Appeals for the District of Columbia. The decision below is also viola-

tive of the spirit and intent of the National Banking Act.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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